

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1202 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 No

MANGIBEN AMBARAM WD/O OF LALBHAI

Versus

URBAN LAND CEILING TRIBUNAL

Appearance:

MS KJ BRAHMBHATT for Petitioners

MR. T.H. Sompura, AGO for Respondents No. 1, 2

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 26/02/97

ORAL JUDGEMENT

1. The rule granted earlier requires to be made absolute in the facts and circumstances Annexed to the petition.

2. The principal contention coming from learned

counsel Ms. V.P. Shah for the petitioners is that in the orders sanctioning the scheme under Section 21 of the ULC Act, 1976, a time frame of five years was given for the completion of the residential units. According to the learned counsel, the scheme came to be sanctioned on 21st July, 1989. The term of five years would be over on 20th July, 1994. Anyhow, the first show cause notice for the cancellation of the scheme came to be issued and served upon the petitioners in the year 1993. To be precise, according to the learned counsel for the petitioners, first show cause notice is dated January 25, 1993. This date would go to show that even before the expiry of the five year period, the show cause notice came to be given to the petitioners. This is an infirmity in the stand taken by the respondents.

3. Moreover, a view has been taken and that too consistently that the time frame being given in the orders sanctioning the scheme cannot be said to be so sacrosanct so as to require the mandatory compliance. A view has been taken by this court that the above said time frame should be taken as directory in nature. Because of this position also it appears that the authorities could not have cancelled the scheme on the ground that the construction was not over within the stipulated time frame.

4. The authorities acting under the ULC Act, 1976 were also of the opinion that a small portion of some of the residential units were being utilised for commercial purpose. The evidence in this respect appears to be scanty. Anyhow, even if, this say of the authorities is accepted, then also, a mere change of use qua a little portion of the residential units cannot be said to be annihilating the main purpose, namely, the residential purpose of the units. This is also the view taken by this court.

5. It, therefore, appears that the authorities were not justified in the orders cancelling the scheme under Section 28 of the ULC Act, 1976. All the orders which are against the petitioners in this respect including the impugned orders are hereby quashed and set aside and the rule is made absolute with no order as to costs.

5. It shall have to be pointed out that all the requirements and obligations under the Act and the Rules including the conditions shall be performed by the petitioners within the reasonable time frame.
